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UNCLAS SECTION 01 OF 02 ISLAMABAD 005103

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E.O. 12958: N/A

TAGS: EFIN ECON EINV PREL PK

SUBJECT: PAKISTAN OCR REVIEW RECOMMENDATIONS

REF: A. Islamabad 0836, B. Islamabad 1091, C. Islamabad 1836, D. Islamabad 1916, E. Islamabad 2577, F. Islamabad 2966, G. Islamabad 3462, H. Islamabad 3714, I. Islamabad 4891

**¶1.** (SBU) Summary: Embassy Islamabad recommends that Pakistan remain on the Watch List (WL) at the conclusion of the current Special 301 Out-of-Cycle Review. While Pakistan has yet to live up to its commitment to enact TRIPS-consistent data protection legislation, we believe that it should remain on the Watch List until we can see the final results of the amendment, which is due to be finalized before the end of the year. Despite some raids this fall, we continue to push the Government of Pakistan (GOP) to make more progress on prosecution and sentencing for arrested pirates. The inclusion of IPR in the Strategic and Economic Dialogues this fall has elevated the issue within the GOP, which we hope, over time, will help make the Intellectual Property Organization (IPO) an effective institution. There have been some improvements in enforcement capacity, notably at the Federal Investigative Agency (FIA). With the exception of progress on data protection, the IPR situation in Pakistan remains largely unchanged from the spring 2007 Special 301 review. End summary.

Data Protection

**¶2.** (SBU) Pakistan promised to enact TRIPS-consistent data protection legislation in 2006. The GOP is sprinting to the finish line on data protection, with the amendment to the 1976 Drugs Act anticipated by the end of the year. GOP officials at the Health and Commerce Ministries are well aware of the importance of enacting TRIPS-consistent data protection legislation to the outcome of the Out-of-Cycle and Special 301 reviews.

**¶3.** (SBU) Progress was been slow until mid-September, when this issue was raised at the Strategic Dialogue, chaired by Deputy Secretary of State Negroponte. Then State Department Deputy

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Assistant Secretary of Economic, Energy and Business Affairs Chris Moore also raised the data protection issue during the economic growth breakout session and during his bilateral meetings. Following these meetings, the Ministry of Health has been more forthcoming in sharing the draft legislation with both the USG and local stakeholders, and has held two meetings with the Pakistani pharmaceutical sector. The U.S. pharmaceutical companies have been pleased with progress to date.

**¶4.** (SBU) The Ministry of Health expects President Musharraf to sign an ordinance amending the 1976 Drugs Law before the end of the year. However, we are not confident that this ordinance will be TRIPS-consistent, despite Embassy representations to senior officials at the Health Ministry, Ministry of Law, Higher Education Commission (which has an interest due to agricultural projects which

produce intellectual property), IPO, and the Ministry of Commerce. IPO initially attempted to distance itself from data protection legislation, arguing that it was the responsibility of the Ministry of Health. We have engaged in an educational process to explain the benefits to Pakistan's economy of data protection, and IPO appears to understand the importance of data protection for growth and innovating and is no longer distancing itself from Pakistan's WTO commitments.

**¶15.** (SBU) Pakistan's foreign pharmaceutical companies believe that imperfect data protection is better than none at all, and are reassured that they will have additional opportunities to strengthen data protection through the issuance of implementing regulations and renewal of the ordinance every four months. An ordinance may be amended prior to renewal. We understand that negotiations with the foreign and domestic (generic) stakeholders continue to be difficult. The domestic companies wield considerable political power and maintain that data protection is already sufficiently covered in existing Pakistani legislation.

IPO ineffective

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**¶16.** (SBU) The IPO has been increasingly ineffective over the past six months, despite the Embassy's efforts to include senior IPO management in training, organization of awareness seminars and other activities. The Board of Directors has not met for over a year, but we hope that a new Chairperson (the third since 2005) and Deputy Director will breathe new life into the organization, which continues to cite past achievements. IPO has not pushed for institution of a patent linkage system

Progress on enforcement capacity building

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**¶17.** (SBU) The Federal Investigative Agency (FIA) has been very

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proactive in developing their IPR crimes investigation capabilities over the past year, but has yet to reap results. FIA has set up IPR enforcement units in Islamabad, Lahore, Karachi and Rawalpindi, and hired a dedicated Director to oversee the four offices. FIA has aggressively pursued international training opportunities; most of the unit attended a U.S. Embassy organized program on Cyber Crimes Investigations with the FBI, Microsoft, and IFPI in mid-August.

**¶18.** (SBU) The FIA reports that it has conducted four raids on factories since the training that produced Hindi content cassettes. Although there has been some progress made in enforcement over the past year, the FIA has not conducted raids at the level it once did in 2005. In 2007, 8 arrests were made, and 173,150 CDs/DVDs seized. Laws are weak compared to the will of the FIA and lack of concern in the judicial system eradicates the FIA's efforts.

Lack of prosecution and sentencing for pirates

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**¶19.** (SBU) However, lack of prosecution and sentencing for pirates continues to plague IPR protection and enforcement. FIA continues to be frustrated that retailers still openly sell pirated optical discs throughout Pakistan. Known counterfeiters are not brought to justice because the laws currently in place do not give FIA and the police the proper authority to arrest and prosecute IPR criminals. The judicial system continues to see IPR cases as a minor offense with no punishment more severe than those served to shoplifters, if at all. Many who file complaints against IPR violators do not come forward which makes prosecution increasingly difficult. IFPI has been very complimentary regarding optical disk enforcement in Pakistan, and have indicated in meetings with the former Prime Minister and DCM its members' interest in investing in Pakistan.

IPR awareness low

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**¶10.** (SBU) IPR awareness continues to be low among law enforcement officials, the judiciary, and the general public. Law enforcement

officials and the judiciary question why IPR violations are a crime.

The Embassy is organizing its first IPR awareness seminars for early 2008 in Islamabad, Lahore and Karachi in early 2008. IPO's efforts in this area have been inadequate, and we believe that they have not taken advantage of the international resources available, instead concentrating their public outreach on conferences on book publishing and TRIPS flexibility, rather than on sensitizing the Pakistani public to the need for IP protection.

Comment

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¶11. (SBU) Comment: We recommend that Pakistan remain on the Watch List until we can see the outcome of the long-awaited data protection amendment. If the amendment and/or its implementation are not consistent with TRIPS, then the interagency committee should revisit Pakistan's Special 301 status during the spring Special 301 regular review. We will continue to pursue opportunities to provide training and increase IPR protection awareness among the general public and GOP officials. We are hopeful that a new government following the January 8 national elections will breathe new blood into the IPO and continue to maintain FIA's momentum on increased IPR enforcement. End comment.

PATTERSON